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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	:	Customer Number: 46320
	:	
John HIND, et al.	:	Confirmation Number: 5066
	:	
Application No.: 10/643,601	:	Group Art Unit: 2454
	:	
Filed: August 18, 2003	:	Examiner: J. Joo
	:	
For: BYPASSING CONTENT BLOCKING		

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed December 21, 2009, wherein Appellants appeal from the Examiner's rejection of claims 1-20.

I. REAL PARTY IN INTEREST

This application is assigned to IBM Corporation by assignment recorded on August 18, 2003, at Reel 014416, Frame 0562.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals and interferences.

III. STATUS OF CLAIMS

Claims 1-20 are pending and four-times rejected in this Application. It is from the multiple rejections of claims 1-20 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

The claims have not been amended subsequent to the imposition of the Fifth and Final Office Action dated September 28, 2009 (hereinafter the Fifth Office Action).

V. SUMMARY OF CLAIMED SUBJECT MATTER

1   Referring to Fig. 2 and also to independent claim 1, a method, in a markup language

2   document delivery system, for circumventing an operation of content blocking logic is disclosed.

3   In block 220, the operation of content blocking logic connected to a browser within a client

4   device is determined (lines 3-13 of paragraph [0030]). In block 230, a reference to content is

5   located in markup (lines 3-4 of paragraph [0032]). In block 240, the reference is replaced in the

6   markup with an alias (lines 4-8 of paragraph [0032]). In block 260, the markup is served to a

7   requesting browser (line 10 of paragraph [0032]). The replacement with the alias circumvents

8   the operation of the content blocking logic (lines 6-8 of paragraph [0033]).

9   Referring to Fig. 1 and also to independent claim 9, a computer hardware markup

10   language document delivery system for circumventing an operation of content blocking logic is

11   disclosed. The system includes detection logic 200 and variable aliasing logic 200. The

12   detection logic detects content blocking logic 180 connected to a browser 130 within a client

13   device (lines 2-3 of paragraph [0029]). The variable aliasing logic 200, responsive to the

1 detection logic 200, is configured to replace content references in markup with aliases for the

2 references (lines 3-7 of paragraph [0029])

3   Referring to Fig. 2 and also to independent claim 13, a machine readable storage having

4 stored thereon a computer program for circumventing an operation of content blocking logic is

5 disclosed. The computer program comprising a set of instructions for causing a computer

6 hardware markup language document delivery system to perform the following operations. In

7 block 220, the operation of content blocking logic connected to a browser within a client device

8 is determined (lines 3-13 of paragraph [0030]). In block 230, a reference to content is located in

9 markup (lines 3-4 of paragraph [0032]). In block 240, the reference is replaced in the markup

10 with an alias (lines 4-8 of paragraph [0032]). In block 260, the markup is served to a requesting

11 browser (line 10 of paragraph [0032]). The replacement with the alias circumvents the operation

12 of the content blocking logic (lines 6-8 of paragraph [0033]).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

    1. Claims 1-2, 7, 9-14, and 19 were rejected under 35 U.S.C. § 103 for obviousness based upon Gnagy et al., U.S. Patent No. 7,058,633 (hereinafter Gnagy), in view of Serena, U.S. Patent No. 6,912,571;

    2. Claims 3 and 15 were rejected under 35 U.S.C. § 103 for obviousness based upon Gnagy in view of Serena and Lambert et al., U.S. Patent Publication No. 2006/0248452 (hereinafter Lambert);

    3. Claims 4 and 16 were rejected under 35 U.S.C. § 103 for obviousness based upon Gnagy in view of Serena and Schumacher, U.S. Patent No. 7,444,369;

    4. Claims 5 and 17 were rejected under 35 U.S.C. § 103 for obviousness based upon Gnagy in view of Serena and Koeppel et al., U.S. Patent No. 6,447,575 (hereinafter Koeppel);

5. Claims 6 and 18 were rejected under 35 U.S.C. § 103 for obviousness based upon Gnagy in view of Serena and Trubey et al., U.S. Patent Publication No. 2002/0077930 (hereinafter Trubey); and

6. Claims 8 and 20 were rejected under 35 U.S.C. § 103 for obviousness based upon Gnagy in view of Serena and Howerton et al., U.S. Patent Publication No. 2001/0049701 (hereinafter Howerton).

VII. ARGUMENT

<p style="margin-left:2em">1   **THE REJECTION OF CLAIMS 1-2, 7, 9-14, AND 19 UNDER 35 U.S.C. § 103 FOR**</p>

2   **OBVIOUSNESS BASED UPON GNAGY IN VIEW OF SERENA**

3   For convenience of the Honorable Board in addressing the rejections, claims 2, 7, 9-14,

4 and 19 stand or fall together with independent claim 1.

5

6   On October 10, 2007, the Patent Office issued the "Examination Guidelines for

7 Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR

8 International Co. v. Teleflex Inc.," 73 Fed. Reg. 57,526 (2007) (hereinafter the Examination

9 Guidelines). Section III is entitled "Rationales To Support Rejections Under 35 U.S.C. 103."

10 Within this section is the following quote from the Supreme Court: "rejections on obviousness

11 grounds cannot be sustained by merely conclusory statements; instead there must be some

12 articulated reasoning with some rational underpinning to support the legal conclusion of

13 obviousness." KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1741 (2007) (quoting In re Kahn,

14 441 F.3d 977, 988 (Fed. Cir. 2006)).

15

16   Referring to the first column on page 57,529 of the Examination Guidelines, the

17 following is a list of rationales that may be used to support a finding of obviousness under 35

18 U.S.C. § 103:

19   (A) Combining prior art elements according to known methods to yield

20   predictable results;

21   (B) Simple substitution of one known element for another to obtain

22   predictable results;

(C) Use of known technique to improve similar devices (methods, or products) in the same way;

(D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;

(E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;

(F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Upon reviewing the Examiner's analysis on page 4 of the Fifth Office Action, the Examiner appears to be employing rationale (G). However, the Examiner's analysis is not entirely clear as to what rationale the Examiner is employing. Applicants, therefore, request that the Examiner clearly identify the rationale, as described in the Examination Guidelines for Determining Obviousness, being employed by the Examiner in rejecting the claims under 35 U.S.C. § 103.

Referring again to rationale (G), as discussed on page 57,534 of the Examination Guidelines, the following findings of fact must be articulated by the Examiner:

(1) a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;

(2) a finding that there was reasonable expectation of success; and

1   (3) whatever additional findings based on the Graham factual inquiries

2   may be necessary, in view of the facts of the case under consideration, to explain

3   a conclusion of obviousness.

4

5   Referring to the paragraph entitled "Office Personnel as Factfinders" on page 57,527 of

6   the Examination guidelines, the following was stated:

7   Office personnel fulfill the critical role of factfinder when resolving the

8   *Graham* inquiries. It must be remembered that while the ultimate determination of

9   obviousness is a legal conclusion, the underlying *Graham* inquiries are factual.

10   When making an obviousness rejection, Office personnel must therefore ensure

11   that the written record includes findings of fact concerning the state of the art and

12   the teachings of the references applied. In certain circumstances, it may also be

13   important to include explicit findings as to how a person of ordinary skill would

14   have understood prior art teachings, or what a person of ordinary skill would have

15   known or could have done. Factual findings made by Office personnel are the

16   necessary underpinnings to establish obviousness.

17

18   In <u>Graham v. John Deere Co.</u>, 383 U.S. 1, 148 USPQ 459 (1966), the Supreme Court set

19   forth the factual inquiries that are to be applied when establishing a background for determining

20   obviousness under 35 U.S.C. 103. These factual inquiries are summarized as follows:

21   (A) Determine the scope and content of the prior art;

22   (B) Ascertain the differences between the prior art and the claims at issue;

23   (C) Resolve the level of ordinary skill in the pertinent art; and

24   (D) Evaluate any indicia of nonobviousness.

25

26   However, in order to make a proper comparison between the claimed invention and the prior art,

27   the language of the claims must first be properly construed. See <u>In re Paulsen</u>, 30 F.3d 1475,

28   1479 (Fed. Cir. 1994). <u>See also</u>, <u>Panduit Corp. v. Dennison Mfg. Co.</u>, 810 F.2d 1561, 1567-68

1   (Fed. Cir. 1987) (In making a patentability determination, analysis must begin with the question,

2   "what is the invention claimed?" since "[c]laim interpretation, ... will normally control the

3   remainder of the decisional process.") <u>See</u> <u>Gechter v. Davidson</u>, 116 F.3d 1454, 1460 (Fed. Cir.

4   1997) (requiring explicit claim construction as to any terms in dispute).

5

6   Each of independent claims 1, 9, and 13 involve a markup language document delivery

7   system. Additionally, each of these claims involve determining (i.e., detecting), by the markup

8   language document delivery system, the operation of content blocking logic connected to a browser

9   within a client device. Thus, the detection occurs within the markup language document delivery

10   system (e.g., a server) and the content blocking is occurring within the browser, which is in a client

11   device.

12

13   On page 3 of the Fifth Office Action, the Examiner characterized the teachings of Gnagy

14   and Serena as follows:

15   Gnargy teaches of determining operation of content block logic but does not specifically
16   teach of determining the operation of content blocking logic connected to a browser within a client
17   device.
18   Serena teaches of determining operation of content blocking logic connected to a browser
19   within a client device (col. 5, line 66-col.6, line 5; col. 6, lines 29-47. Receive indication of
20   blocked content. Browser.)
21
22   Appellants respectfully submit that the Examiner has not properly characterized the scope and

23   content of Serena. Moreover, the Examiner has not properly characterized the differences between

24   Gnagy and the claimed limitations.

25

26   Gnagy does not just fail to teach "determining the operation of content blocking logic

27   connected to a browser within a client device," as admitted by the Examiner. Additionally,

28   Gnagy also fails to teach where this determining is performed – i.e., the markup language

1   document delivery system.

2

3   Serena teaches the use of an observation program 405 that may reside at a server computer

4   or within an intermediary device between the user's computer 415 and the internet. Referring to

5   column 5, line 66 through column 6, line 12, Serena teaches the following:

6   The observation program 405 receives user preferences (step 505). Preferences from the
7   user indicate some information about the content that the user wishes to control in addition to
8   some information about the user. The observation program 405 may receive the content
9   preferences at any time and from sources other than the user. For example, the user A!t may enter
10   content preferences during a special enrollment period or during regular operation of the user's
11   computer system 415. Likewise, the user may enter preferences at any time during regular
12   operation of the user's computer system 415 by opening a preference selection application in the
13   observation program. Preferences may be received by an organization separate from user input--
14   thus, they may be updated at any time by the organization.
15
16   Thus, based upon the above-reproduced teachings, the observation program 405 receives user

17   preferences (as to controlled information). These preferences may be received from the user or

18   "from sources other than the user." The observation program 405, based upon the preferences as to

19   controlled information, observes interactions between the user's computer system 415 and another

20   entity (e.g., a server). Referring to column 5, lines 12-45, Serena describes examples of where the

21   observation program 405 removes information (e.g., an advertisement) from the communications

22   between the user's computer system 415 and the other entity.

23

24   The Examiner's cited passage of column 6, lines 29-47 refers to a procedure, performed by

25   the user, for generating content preferences. These content preferences are sent to the observation

26   program 405.

27

28   As noted earlier, a proper characterization of the differences between Gnagy and the claimed

29   invention is that Gnagy fails to teach (i) "determining the operation of content blocking logic

1   connected to a browser within a client device" and (ii) the determining is performed within a

2   markup language document delivery system. The Examiner's secondary reference of Serena,

3   however, fails to cure either of these deficiencies.

4

5   Although Serena teaches an observation program receiving user preferences from a user,

6   the receipt of the user preferences could be considered "determining the operation of content

7   blocking by a user." However, the operation of the content blocking logic is performed by the

8   observation program 405, which is not connected to a browser within a client device. Thus,

9   Serena fails to teach determining the operation of content blocking logic connected to a browser

10   within a client device. Although the observation program 405 may reside in a server, the

11   determining step involves the server determining an operation of itself and not of an operation

12   within another entity (i.e. content blocking logic connected to a browser within a client device).

13   Therefore, even if one having ordinary skill in the art were motivated to modify Gnagy in view

14   of Serena, the claimed invention would not result since the resultant combination would not

15   include all of the claimed limitations.

16

17   **THE REJECTION OF 3 AND 15 UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON**

18   **GNAGY IN VIEW OF SERENA AND LAMBERT**

19   For convenience of the Honorable Board in addressing the rejections, claims 3 and 15

20   stand or fall together with independent claim 1.

21

22   Claims 3 and 15 respectively depend from independent claims 1 and 13 and Appellants

23   incorporate herein the arguments previously advanced in traversing the imposed rejection of claims

1   1 and 13 under 35 U.S.C. § 103 for obviousness based upon the combination of Gnagy and Serena.

2   The tertiary reference to Lambert does not cure the argued deficiencies of the prior rejection.

3   Accordingly, <u>even if</u> one having ordinary skill in the art were impelled to combine the applied prior

4   art, the claimed invention would not result. Appellants, therefore, respectfully submit that the

5   imposed rejection of claims 3 and 15 under 35 U.S.C. § 103 for obviousness based upon Gnagy

6   in view of Serena and Lambert is not viable.

7

8   **THE REJECTION OF 4 AND 16 UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON**

9   **GNAGY IN VIEW OF SERENA AND SCHUMACHER**

10   For convenience of the Honorable Board in addressing the rejections, claims 4 and 16

11   stand or fall together with independent claim 1.

12

13   Claims 4 and 16 respectively depend from independent claims 1 and 13 and Appellants

14   incorporate herein the arguments previously advanced in traversing the imposed rejection of claims

15   1 and 13 under 35 U.S.C. § 103 for obviousness based upon the combination of Gnagy and Serena.

16   The tertiary reference to Schumacher does not cure the argued deficiencies of the prior rejection.

17   Accordingly, <u>even if</u> one having ordinary skill in the art were impelled to combine the applied prior

18   art, the claimed invention would not result. Appellants, therefore, respectfully submit that the

19   imposed rejection of claims 4 and 16 under 35 U.S.C. § 103 for obviousness based upon Gnagy

20   in view of Serena and Schumacher is not viable.

21

22

THE REJECTION OF 5 AND 17 UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON GNAGY IN VIEW OF SERENA AND KOEPPEL

For convenience of the Honorable Board in addressing the rejections, claims 5 and 17 stand or fall together with independent claim 1.

Claims 5 and 17 respectively depend from independent claims 1 and 13 and Appellants incorporate herein the arguments previously advanced in traversing the imposed rejection of claims 1 and 13 under 35 U.S.C. § 103 for obviousness based upon the combination of Gnagy and Serena. The tertiary reference to Koeppel does not cure the argued deficiencies of the prior rejection. Accordingly, <u>even if</u> one having ordinary skill in the art were impelled to combine the applied prior art, the claimed invention would not result. Appellants, therefore, respectfully submit that the imposed rejection of claims 5 and 17 under 35 U.S.C. § 103 for obviousness based upon Gnagy in view of Serena and Koeppel is not viable.

THE REJECTION OF CLAIMS 6 AND 18 UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON GNAGY IN VIEW OF SERENA AND TRUBEY

For convenience of the Honorable Board in addressing the rejections, claims 6 and 18 stand or fall together with independent claim 1.

Claims 6 and 18 respectively depend from independent claims 1 and 13 and Appellants incorporate herein the arguments previously advanced in traversing the imposed rejection of claims 1 and 13 under 35 U.S.C. § 103 for obviousness based upon the combination of Gnagy and Serena. The tertiary reference to Trubey does not cure the argued deficiencies of the prior rejection.

Accordingly, <u>even if</u> one having ordinary skill in the art were impelled to combine the applied prior art, the claimed invention would not result. Appellants, therefore, respectfully submit that the imposed rejection of claims 6 and 18 under 35 U.S.C. § 103 for obviousness based upon Gnagy in view of Serena and Trubey is not viable.

THE REJECTION OF CLAIMS 8 AND 20 UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON GNAGY IN VIEW OF SERENA AND HOWERTON

For convenience of the Honorable Board in addressing the rejections, claims 8 and 20 stand or fall together with independent claim 1.

Claims 8 and 20 respectively depend from independent claims 1 and 13 and Appellants incorporate herein the arguments previously advanced in traversing the imposed rejection of claims 1 and 13 under 35 U.S.C. § 103 for obviousness based upon the combination of Gnagy and Serena. The tertiary reference to Howerton does not cure the argued deficiencies of the prior rejection. Accordingly, <u>even if</u> one having ordinary skill in the art were impelled to combine the applied prior art, the claimed invention would not result. Appellants, therefore, respectfully submit that the imposed rejection of claims 8 and 20 under 35 U.S.C. § 103 for obviousness based upon Gnagy in view of Serena and Howerton is not viable.

Conclusion

Based upon the foregoing, Appellants respectfully submit that the Examiner's rejections under 35 U.S.C. § 103 based upon the applied prior art is not viable. Appellants, therefore, respectfully solicit the Honorable Board to reverse the Examiner's rejections under 35 U.S.C. § 103.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: December 21, 2009   Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. A method, in a markup language document delivery system, for circumventing an operation of content blocking logic, the method comprising the steps of:

determining the operation of content blocking logic connected to a browser within a client device;

locating in markup a reference to content;

replacing in said markup said reference with an alias; and,

serving said markup to a requesting browser;

whereby said replacement with said alias circumvents the operation of said content blocking logic.

2. The method of claim 1, further comprising the steps of:

subsequent to said serving step, replacing said alias with a new alias; and,

serving said markup with said new alias to the requesting browser.

3. The method of claim 2, wherein said new alias is selected from a set of aliases in a round-robin manner.

4. The method of claim 1, further comprising the steps of:

inserting a refresh tag in said markup to command a refreshing of said markup within a shortened period of time; and,

performing said locating, replacing and serving steps with a new alias subsequent to said refreshing.

5. The method of claim 1, wherein said determining step comprises the steps of:

tracking a number of references to content disposed in said markup;

further tracking a number of requests for content produced when rendering said markup; and,

determining that content blocking has occurred when a difference between said references and said requests exceeds a threshold value.

6. The method of claim 1, wherein said determining step comprises the steps of:

statistically tracking instances of served content; and,

determining that content blocking has occurred when a particular one of said served content has not been served as often as indicated by said statistical trackings.

7. The method of claim 1, wherein said replacing step comprises the steps of:

formulating said alias from said reference; and,

replacing said reference with said alias.

8. The method of claim 7, wherein said formulating step comprises the steps of:

encoding a string based upon a uniform resource identifier (URI) in said reference;

interspersing at least one file system delimiter in said encoded string to generate a simulated path to supplemental content;

combining a network address for a local file system with said simulated path; and,

recording said simulated path and a correlation to said reference in an alias table for use when de-referencing said URI into said simulated path.

9. A computer hardware markup language document delivery system for circumventing an operation of content blocking logic, the system comprising:

detection logic for detecting content blocking logic connected to a browser within a client device; and,

variable aliasing logic responsive to said detecting logic, said variable aliasing logic having a configuration for replacing content references in markup with aliases for said references.

10. The system of claim 9, wherein said variable aliasing logic is communicatively coupled to a reverse proxy.

11. The system of claim 9, further comprising an alias table comprising a plurality of entries, each entry correlating an alias with corresponding content.

12. The system of claim 9, further comprising:

an address encoder having logic for producing an encoded string based upon at least a portion of a reference;

a simulated path formulator coupled to said encoder, said formulator having a configuration for generating a simulated path to supplemental content; and,

a translation table configured to store said simulated path and at least a portion of said reference.

13.   A machine readable storage having stored thereon a computer program for circumventing an operation of content blocking logic, the computer program comprising a set of instructions for causing a computer hardware markup language document delivery system to perform the steps of:

determining the operation of content blocking logic connected to a browser within a client device;

locating within markup a reference to content;

replacing in said markup said reference to said content with an alias; and,

serving said markup to a requesting browser;

whereby said replacement of said reference with said alias circumvents the operation of said content blocking logic.

14.   The machine readable storage of claim 13, further comprising the steps of:

subsequent to said serving step, replacing said alias with a new alias; and,

serving said markup with said new alias to the requesting browser.

15.   The machine readable storage of claim 14, wherein said new alias is selected from a set of aliases in a round-robin manner.

16.   The machine readable storage of claim 13, further comprising the steps of:

inserting a refresh tag in said markup to command a refreshing of said markup within a shortened period of time; and,

performing said locating, replacing and serving steps with a new alias subsequent to said refreshing.

17. The machine readable storage of claim 13, wherein said determining step comprises the steps of:

tracking a number of references to content disposed in said markup;

further tracking a number of requests for content produced when rendering said markup; and,

determining that content blocking has occurred when a difference between said references and said requests exceeds a threshold value.

18. The machine readable storage of claim 13, wherein said determining step comprises the steps of:

statistically tracking instances of served content; and,

determining that content blocking has occurred when a particular one of said served content has not been served as often as indicated by said statistical trackings.

19. The machine readable storage of claim 13, wherein said replacing step comprises the steps of:

formulating said alias from said reference; and,

replacing said reference with said alias.

20. The machine readable storage of claim 19, wherein said formulating step comprises the steps of:

encoding a string based upon a uniform resource identifier (URI) in said reference;

interspersing at least one file system delimiter in said encoded string to generate a simulated path to supplemental content;

combining a network address for a local file system with said simulated path; and,

recording said simulated path and a correlation to said reference in an alias table for use when de-referencing said URI into said simulated path.

IX. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellants in this Appeal, and thus no evidence is attached hereto.

X. RELATED PROCEEDINGS APPENDIX

Since Appellants are unaware of any related appeals and interferences, no decision rendered by a court or the Board is attached hereto.